

## REMARKS

The foregoing amendment is provided to remove issues for appeal and to present rejected claims in better form for allowance or consideration on appeal, rather than to avoid prior art.

Applicants respectfully request reconsideration of this application as amended. Claims 1-51 are pending in the application. Claims 11-14, 28-33 and 44-51 are rejected. Claims 1-10 and 34-43 are allowed. Claims 15-27 are objected to. Claims 15, 45-47 and 51 are amended. Claims 11-14, 44 and 50 are canceled.

### Request Withdrawal of Final Office Action

Applicant respectfully notes that on October 30, 2007 a Request for Continued Examination (RCE) was filed in the above identified application under 37 CFR §1.114 along with an Information Disclosure Statement (IDS), a request under 37 CFR §1.103(c) for suspension of action for three months and the fees required under 37 CFR §1.17(i).

Then, on November 23, 2007 the Examiner mailed another Final Office Action. Applicant respectfully requests the Examiner to enter the present amendments and to consider the following remarks and the cited references submitted herewith in a second IDS as being submitted within the requested three month suspension period. Applicant further requests the Examiner withdraw the Final Office Action mailed November 23, 2007, as also being within the requested three month suspension period.

### Rejections under 35 U.S.C. §102

Claims 11-14, 44-46 and 50 are rejected under 35 U.S.C. §102(e), as allegedly being anticipated by Figure 5 of US Patent 6,816,961 (Rice). Applicant respectfully

disagrees with the Examiner's characterization of what Rice discloses but has elected to cancel Claims 11-14, 44 and 50 and to solicit allowance of the claims as presently amended. Applicant reserves the right to dispute the Examiner's characterization of Rice if it becomes necessary.

#### Rejections under 35 U.S.C. §101

Claims 28-33 and 44-51 are rejected under 35 U.S.C. §101, as allegedly being directed to non-statutory subject matter. Applicant respectfully disagrees.

The Final Office Action states that the claimed "article comprising a tangible machine readable medium that stores a program" fails to fall within a statutory category.

Applicant respectfully submits that a precedential order was issued by the U.S. Court of Appeals for the Federal Circuit in accordance with the Commissioner of Patent and Trademarks' concession that computer programs embodied in a tangible medium are patentable subject matter under 35 USC § 101. *In re Beauregard*, 53 F.3d 1583, 35 USPQ2d (BNA) 1383.

Thus if what Applicant has claimed is a computer program embodied in a tangible medium, it is statutory subject matter.

The Examiner argues that in the specification a machine-readable medium includes transmission media, e.g. carrier waves, and as such may merely recite a form of energy. Applicant respectfully points out that what is claimed is "a tangible machine readable medium." Applicant also respectfully notes that there exists no composition of matter that is not a form of energy.

While transmission media such as carrier waves certainly can represent a machine readable medium, the specification says nothing about what is "tangible." The Examiner is in effect arguing that transmission media such as carrier waves are not tangible, and therefore not patentable subject matter. If the Examiner is correct, then the claimed

limitation of “a tangible machine readable medium” limits the claimed subject matter to only patentable subject matter.

Thus Applicant respectfully submits that Claims 28-33, 45-49 and 51, as amended, are directed to statutory subject matter.

#### CONCLUSION

Applicants respectfully submit the present claims for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Lawrence Mennemeier at (408) 765-2194.

Authorization is hereby given to charge our Deposit Account No. No. 50-0221 for any charges that may be due.

Respectfully submitted,

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